



STATE OF INDIANA

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January 24, 2018

Cynthia Forbes, Legal Counsel
Indiana State Police
100 North Senate Ave.
Indianapolis, IN 46204-2259

RE: Informal Opinion 18-INF-16; Fees for Electronic Crash Data

Dear Ms. Forbes:

This informal opinion is in response to your inquiry about whether the Indiana State Police may charge a fee for crash data under the Access to Public Records Act ("APRA"). In accordance with Indiana Code Section 5-14-4-10(5), I issue the following informal opinion to your inquiry.

BACKGROUND

A crash report must be completed by law enforcement personnel in the event of a vehicle accident resulting in injury or death or property damage in excess of \$1000 in accordance with Indiana Code Section 9-26-2-1. The Indiana State Police ("ISP") is the central repository for that data. ISP outsources the maintenance of the crash data via the Automated Reporting Information Exchange System ("ARIES") currently in the stewardship of LexisNexis.

Fees for copies of crash reports are governed by Indiana code section 9-29-11-1(c), which sets a floor of \$5 per copy. The Indiana Code is silent, however, about aggregate or sorted data *within* the system. When a request for non-crash-specific data is received by ISP, it forwards the request to LexisNexis for fulfillment. The nature of the database is sufficiently complex and individual to each request.¹ Your question is twofold:

1. Is ISP meeting its obligation under APRA to fulfill a public records request for crash data by directing LexisNexis to work on our behalf with the requestor?
2. Is charging a search fee for the technical services necessary to fulfill these requests consistent with APRA?

¹ A sample search algorithm was provided for this Office's review and the query string is indeed complex.

DISCUSSION

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) expressly states that “it is the public policy of the [State of Indiana] that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” Ind. Code § 5-14-3-1. In general, APRA governs access to public records in Indiana. What is more, public records are presumptively disclosable unless an exception applies.

2. Outsourcing Stewardship of Public Records

Public agencies commonly utilize outside experts to maintain and store public records. At times it is more cost effective to do so as the agency may not have the technical know-how or resources to perform those tasks in-house. The APRA contemplates this and this Office takes no exception to the practice.

Indiana Code Section 5-14-3-3 states that a public agency may enter into a contract for the maintenance of public records but that contract may not be a hindrance to access:

(d)...a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system.

...

(g) A public agency may not enter into or renew a contract or an obligation:
(1) for the storage or copying of public records;

...

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

Therefore, a public agency may utilize the expertise and resources of a third party to maintain a data collection and storage program such as ARIES.

3. Fees for extrapolating data

It is foreseeable that, without certain safeguards, a third-party might charge a search fee for public information in a manner inconsistent with the APRA. While Indiana code section 5-14-3-3(g), as noted above, provides one of those safeguards, certain fees are allowable for the collection of electronic data. Under Indiana Code Sections 5-14-3-6(c) and

8(g), an agency may charge the direct cost of providing electronic data and running programmable search queries for such data.

- (d) "Direct cost" means one hundred five percent (105%) of the sum of the cost of:
- (1) the initial development of a program, if any;
 - (2) the labor required to retrieve electronically stored data; and
 - (3) any medium used for electronic output;

By extension, a third-party may also charge direct cost. So long as the fee is not prohibitive to a requester, a fee reflecting direct costs is appropriate. The operative question becomes is there a direct correlation between the fee charged by LexisNexis and direct cost. Ultimately ISP is the "owner" of the records and must direct LexisNexis to act accordingly. To the extent the fee is consistent with these statutory parameters, the fee is appropriate.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor